

Message Text

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ACTION ARA-06

INFO OCT-01 SS-14 ISO-00 NSC-05 NSCE-00 SSO-00 INR-05

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O 232155Z OCT 75

FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 7332

C O N F I D E N T I A L SECTION 1 OF 2 LIMA 8796

LIMDIS

FOR ARA - WILLIAM ROGERS; L - MONROE LEIGH; EB - THOMAS ENDERS
TREASURY - JOHN BUSHNELL; COMMERCE - DON ARRILL; CIEP - WAYNE
SHARPE

EO 11652: GDS

TAGS: EINV, EIND, PFOR, PE

SUBJ: MARCONA - USG-GOP NEGOTIATIONS: MEETING WITH COMMISSION

1. SUMMARY: AMBASSADOR AND U.S. GROUP MET WITH GOP COMMISSION FOR TWO HOURS AFTERNOON OF OCTOBER 22. MEETING WAS CORDIAL AND GENERALLY FRANK; PRINCIPAL DEVELOPMENT WAS COMMISSION'S ASSURANCE THAT ARTICLE 8 OF DECREE PRECLUDED COMPENSATION ONLY FOR SAN NICHOLAS BUILDINGS AND GROUNDS, NOT MACHINERY, THE POSITION MARCONA HAD BEEN PRESSING BEFORE TALKS BROKE DOWN. COMMISSION INDICATED THEY WERE LEANING TOWARD PRESENTING COUNTEROFFER, PROBABLY BASED ON SOME FORM OF ADJUSTED BOOK VALUE. USDELEXPLAINED USG ADHERENCE TO PRINCIPLE OF PROMPT, ADEQUATE, AND EFFECTIVE COMPNSATION AND, WHERE APPROPRIATE, GOING CONCERN VALUE, EMPHASIZED THAT OUR INTEREST WAS RESULT-
ING FIGURE THAT WAS FAIR AND ACCEPTABLE TO MARCONA.
COMMISSION INDICATED LITTLE INTEREST IN MARCONA'S COM-
MERCIALIZATION PROPOSAL (RESUMPTION OF SALES, ESCROW
ACCOUNT, ETC.) BUT APPEARS TO UNDERSTAND NEED FOR
URGENT PRODUCTION OF REASONABLE COUNTEROFFER. END SUMMARY.

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2. COMMISSION MEMBERS PRESENT WERE ACTING CHAIRMAN AMBASSADOR DE LA PUENTE (FOREIGN MINISTRY), AMADO YATACO (DIRECTOR GENERAL OF MINING, ENERGY AND MINES MINISTRY), JOSE LUIS BROUSSET (PRESIDENT, BANCO POPULAR) AND JORGE RUIZ DE CASTILLA (GENERAL MANAGER, PERUVIAN STEAMSHIP LINES). RUIZ ELDREDGE, CHAIRMAN OF THE MARCONA COMMISSION, WAS CONSPICUOUSLY ABSENT. DE LA PUENTE BEGAN BY EXPLAINING THAT THERE HAD BEEN SOME MISINTERPRETATION OF ARTICLE 8 OF DECREE. ARTICLE 8 DOES NOT PRECLUDE PAYMENT FOR ALL OF SAN NICOLAS ASSETS, ONLY FOR BUILDINGS AND GROUNDS. (MARCONA ADVISED US EARLIER THAT SAN NICOLAS BUILDINGS AND GROUNDS REPRESENTED ONLY ABOUT 15 PERCENT OF TOTAL ASSETS, WHILE MACHINERY THERE REPRESENTS ABOUT 75 PERCENT OF TOTAL MARCONA ASSETS IN PERU.) HE INDICATED THAT COMMISSION WOULD PROBABLY PROCEED ON BASIS OF ADJUSTED BOOK VALUE, VALUATION OF ASSETS LESS DEBTS AND OTHER REDUCTIONS. THIS, HE SAID, REPRESENTS "JUST PRICE" CONCEPT IN PERUVIAN AND OTHER LATIN AMERICAN LAW. OTHER MEMBERS OF GOP GROUP REVIEWED MARCONA GROWTH, AGAIN SUGGESTING THAT ALL OF MARCONA'S ASSETS, BOTH INSIDE AND OUTSIDE OF PERU, WERE THE RESULT OF PERUVIAN OPERATIONS AND PROFITS THEREFROM. FACT THAT MARCONA'S PERUVIAN BRANCH HAD EXPERIENCED LOSSES FROM 1971-74 WAS ALSO EMPHASIZED AS INDICATION OF RELATIVELY LOW VALUE OF PERUVIAN OPERATION.

3. FISHLOW BEGAN BY EXPLAINING THAT IN US VIEW EXPROPRIATION REQUIRED PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION. BOOK VALUE IS NOT USUALLY SUFFICIENT; RATHER, PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION USUALLY MEANS GOING CONCERN VALUE. FISHLOW NOTED ALSO THAT GENERAL PERUVIAN EXPROPRIATION LAW SEEMED TO COINCIDE WITH THIS VIEW AS IT TOOK FUTURE PROFITS INTO ACCOUNT. HE OBSERVED THAT MANY OTHER LATIN AMERICAN COUNTRIES APPEAR TO HAVE RECOGNIZED THAT BOOK VALUE ALONE IS NOT ENOUGH, DIRECTLY OR INDIRECTLY, BY PROVIDING ADDITIONAL ELEMENT OF COMPENSATION IN FORM OF ONGOING MANAGEMENT OR SALES CONTRACTS. (THE VENEZUELAN EXPERIENCE WITH THE IRON ORE INDUSTRY WAS MENTIONED.) IN THIS CONTEXT HE EMPHASIZED THAT FROM OUR POINT OF VIEW THE FORMULA USED BY GOP WAS NOT AS CONFIDENTIAL

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IMPORTANT AS THE RESULT; IF BOTTOM LINE FIGURE WAS CONSIDERED FAIR AND ACCEPTABLE BY MARCONA IT WOULD NOT BE CHALLENGED BY USG, EVEN THOUGH USG COULD NOT ACCEPT PRINCIPLE OF BOOK VALUE AS GENERALLY VALID.

4. FOLLOWING UP ON "BOOK VALUE PLUS" CONCEPT AS ROUTE TO ADEQUATE COMPENSATION, FISHLOW SUGGESTED POSSIBILITY OF SALE OF MARCONA SUPPLY CONTRACTS TO GOP AS ONE MEANS OF

CONTRIBUTING TO ACCEPTABLE BOTTOM LINE FIGURE. HE SUGGESTED THAT ONGOING SALES RELATIONSHIP, WITH AS LITTLE OR AS MUCH DIRECT MARCONA INVOLVEMENT AS GOP DESIRED, WOULD ALSO GENERATE FOREIGN EXCHANGE, THUS REDUCING REAL COST TO PERU OF THE EVENTUAL SETTLEMENT. FISHLOW NOTED THAT THIS APPROACH COULD BEGIN IMMEDIATELY, E.G., IT WOULD NOT HAVE TO WAIT FOR SETTLEMENT. ALTERNATIVELY, GOP COULD SIMPLY COME UP WITH TOTAL SUM TO BE PAID TO MARCONA, ACCEPTABLE TO MARCONA; THEN IRON ORE SALES COULD BE HANDLED EXCLUSIVELY BY GOP. HE NOTED THAT DESPITE RECENT LOSSES MARCONA FACILITY WAS QUITE VALUABLE; FOR EXAMPLE, SIMILAR FACILITY BEING CONSTRUCTED IN BRAZIL REQUIRED AN INVESTMENT OF HALF A BILLION DOLLARS. GOP HAS RECEIVED FROM MARCONA A Viable, VALUABLE ASSET AND SHOULD COMPENSATE ACCORDINGLY. FISHLOW EMPHASIZED THAT IT WAS ESSENTIAL THAT GOP COME FORWARD PROMPTLY WITH A REASONABLE PROPOSAL. MARCONA HAD MENTIONED SEVERAL FIGURES RANGING FROM \$140 TO \$235 MILLION; NOW IT WAS GOP'S TURN.

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FM AMEMBASSY LIMA

TO SECSTATE WASHDC IMMEDIATE 7333

C O N F I D E N T I A L SECTION 2 OF 2 LIMA 8796

LIMDIS

FOR ARA - WILLIAM ROGERS; L - MONROE LEIGH; EP - THOMAS ENDERS
TREASURY - JOHN BUSHNELL; COMMERCE - DON ARRILL; CIEP - WAYNE
SHARPE

5. DE LA PUENTE SAID THAT THE COMMERCIALIZATION APPROACH

MIGHT HAVE WORKED AT ANOTHER TIME, BUT THAT IN PRESENT POLITICAL CLIMATE THIS WAS DIFFICULT FOR GOP. HE STRONGLY HINTED THAT ANY SUCH ARRANGEMENT WAS IN CONFLICT WITH GOP'S NATURAL RESOURCES POLICIES, PURCHASE OF THE CONTRACTS WAS INCONSISTENT WITH GOP'S POSITION RIGHT TO SELL ORE WAS ALREADY THEIRS. HE SAID, HOWEVER, THAT GLOBAL SUM APPROACH WAS VIABLE, BUT EMPHASIZED GOP'S ADHERENCE TO BOOK VALUE CONCEPT. BROUSSET ASKED WHETHER GLOBAL SUM USG ENVISIONED WAS BOOK VALUE OR BOOK VALUE PLUS PURCHASE OF CONTRACT.

6. FISHLOW AND GANTZ EXPLAINED AGAIN THAT AS A GENERAL RULE USG POSITION ON VALUATION IS THAT GOING CONCERN VALUE IS USUALLY BEST ESTIMATE OF FAIR MARKET VALUE. BOOK VALUE USUALLY MUST BE AUGMENTED BY ADDITIONAL BENEFITS THAT CAN BE TREATED AS PART OF TOTAL COMPENSATION PACKAGE, AS IN VENEZUELAN IRON ORE SITUATION. ONE USG CONCERN IS THAT IF GOP BEGINS WITH BOOK VALUE, THEN SUBTRACTS TOTAL DEBTS, RESULTING FIGURE MAY BE SO LOW AS TO BE UNACCEPT-

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ABLE TO MARCONA AND TO USG, CREATING PROBLEMS FOR EVERYONE. WHILE USG DOES NOT CARE WHAT FORMULA GOP USES, IF RESULTING FIGURE IS TOO SMALL THERE WILL BE SERIOUS DIFFICULTIES. IN RESPONSE TO AN ASSERTION THAT USG HAD RECOGNIZED VALIDITY OF GOP DECREE, US NEGOTIATORS EMPHASIZED THAT THIS WAS NOT THE CASE; WE CANNOT ACCEPT BOOK VALUE STANDARD OF COMPENSATION. HOWEVER, USG WOULD NOT CHALLENGE BOTTOM LINE FIGURE -- REGARDLESS OF HOW IT WAS ARRIVED AT -- IF IT IS ACCEPTABLE TO MARCONA. EINAUDI EMPHASIZED DANGER OF GOP TRYING ITSELF TOO CLOSELY TO A PROCEDURE THAT IS INSUFFICIENTLY FLEXIBLE TO PERMIT FURTHER NEGOTIATION, AND THUS COULD NOT ULTIMATELY PRODUCE A MUTUALLY ACCEPTABLE FIGURE.

7. US NEGOTIATORS AND COMMISSION AGREED THAT ANOTHER MEETING WOULD BE DESIREABLE OCTOBER 23, AND COMMISSION PROMISED TO HAVE A RESPONSE BY THAT TIME.

9. COMMENT: CONFIRMATION OF GOP POSITION ON ARTICLE 8 REPRESENTS A SIGNIFICANT STEP FORWARD. WHILE WE DON'T RULE OUT SOME FORM OF ONGOING RELATIONSHIP FOR MARCONA, IT IS OBVIOUS THAT GOP WOULD LIKE TO AVOID IT.

10. AS WE WRITE, A SECOND MEETING OF THE COMMISSION HAS BEEN SCHEDULED FOR 5:00 P.M., OCTOBER 23, AND A MEETING WITH PRIME MINISTER AND MINISTER OF FINANCE IS SCHEDULED FOR 3:00 P.M., OCTOBER 24.

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